

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Toll Free Service Access Codes)	WC Docket No. 95-155
)	
Somos, Inc. Petition for Declaratory Ruling)	WT Docket No. 08-7
Regarding Registration of Text-Enabled Toll)	
Free Numbers)	

RESPONSE OF CENTURYLINK

CenturyLink, Inc. (“CenturyLink”)¹ here comments on the Petition of Somos, Inc. for a Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers.²

I. Only One Part Of The Somos Petition Is Ripe For Declaratory Ruling Treatment.

The Somos Petition seeks a declaratory ruling with respect to two issues involving the text enablement of a toll-free number. First, it seeks a declaration that a provider may not text-enable a toll-free number without seeking authorization from the Responsible Organization (Resp Org) with assignment and routing authority for that toll-free number. CenturyLink supports this aspect of the Somos’ Petition.

Second, Somos asks the Commission to “clarify that any messaging provider that text-enables a Toll-Free number is responsible for ensuring that the number is properly registered with the Toll-Free Neutral Administrator’s Text and Smart Services (‘TSS’) Registry.” Somos argues that this registration is necessary to ensure accountability and promote open competition

¹ This filing is made on behalf of CenturyLink, Inc. and its subsidiary entities that manage toll-free numbers in their Responsible Organization capacity.

² Petition of Somos, Inc. for a Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers, CC Docket No. 95-155 (Oct. 28, 2016) (Somos Petition); Wireline Competition Bureau Seeks Comment on Somos, Inc. Petition for Declaratory Ruling Regarding Registration of Text-Enabled Toll Free Numbers, WC Docket No. 95-155, WT Docket No. 08-7, Public Notice, DA 16-1259 (Nov. 4, 2016).

in messaging services. CenturyLink is unable to support this aspect of the Somos Petition at this time for two reasons.

First, the issue is not one suitable for a declaratory ruling. While the Somos Petition seeks, to some extent, to remove an uncertainty (one of the grounds for the Commission to issue a declaratory ruling), it is unclear what statute, rule or Order pertaining to the creation of a registry regarding toll-free numbers and texting is uncertain or unclear. To the best of CenturyLink's knowledge, there are no pertinent statutes, rules or Orders with respect to the matter. Additionally, while there is clearly a "controversy" within the industry on the topic, again there is no statute, rule or Order to be interpreted to remove that controversy. In short, the subject matter has not been addressed, let alone substantively resolved by the Commission, such that a "clarification" is warranted.³ The aspect of the Somos Petition dealing with the mandatory use of the Somos TSS with respect to text messages to toll-free numbers is more appropriately handled through industry activities and consensus or through a rulemaking. Second, the relief Somos seeks would institute Somos as the monopoly registrar with respect to activities that result in the text-enabling of a toll-free number. Whether the creation of such a monopoly is in the public interest is unclear given the absence of any formal Commission record on the matter. Moreover, the registry Somos seeks to institute would be one operated on a for-profit basis, rather than on a non-profit basis as its other toll-free number management activities are managed. A determination of whether this would be in the public interest is clearly a matter for a rulemaking, not a declaratory ruling.

³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005; Petitions for Declaratory Ruling and Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv) Regarding the Commission's Opt-Out Notice Requirement for Faxes Sent with the Recipient's Prior Express Permission*, CG Docket Nos. 02-278 and 05-338, Order, DA 16-1242 at ¶ 22; *see also* 47 C.F.R. § 1.2.

Over and above the legal principles associated with the Somos Petition, CenturyLink notes that there is ongoing industry activity with respect to a variety of issues involving the enabling of text message functionality and toll-free numbers. Not only has the matter been addressed at the NANC,⁴ but according to CTIA, it is working with “Somos, ZipWhip, and Resp Orgs, to identify key principles that uphold the integrity of toll-free telephone numbers, provide transparency to Resp Orgs and protect consumers from unwanted messages from toll-free telephone numbers.”⁵ Pursuing the already-existing industry activities with respect to the matter of text messaging to toll-free numbers would provide a sound predicate foundation for addressing the matter in a more formal way, such as through a rulemaking.

II. The Commission Should Declare That Authorization To Text-Enable A Toll-Free Number Should Be Coordinated Through The Responsible Organization, Not A Purported Number Holder.

This aspect of the Somos Petition should be granted. The Commission should declare that only the end user assigned the toll-free number should be authorized to agree to its being text-enabled. That seems self evident. But the matter of “authorization” and “subscribership” can get tricky,⁶ as CenturyLink can attest from its own experience.

⁴ The matter of the creation of the TSS, its history and expectations, was addressed in the March 24, 2016 North American Numbering Council (NANC) meeting, where there were four Commission-staff participants. https://apps.fcc.gov/edocs_public/attachmatch/DOC-340413A1.pdf at pp. 45-61.

⁵ Ex Parte letter from Scott K. Bergmann (CITA), to Marlene H. Dortch (FCC), WT Docket No. 08-7 (Oct. 31, 2016).

⁶ The Somos Petition references the issue of “shared use” of a single toll-free number (Somos Petition at 7) where there can be confusion as to who is authorized to do what. It also references a test “in which several of their analysts obtained Toll-Free numbers from Resp Orgs” and “were able to text-enable another analysts’s Toll-Free numbers” quite easily. *Id.* at 6-7. A more detailed description of this test can be found in a Letter from Joel Bernstein, Vice President Regulatory and Public Policy, Somos, Inc. to Marlene H. Dortch, Secretary (FCC), WT Docket No. 08-7 and CC Docket No. 95-155 (Jul. 1, 2016) at p. 1 (Somos July 1, 2016 Letter).

For example, when an authorized toll-free end user allows the number to be used for the benefit of another, that “other” often believes the number is theirs to port or assign or whatever.⁷ That “other” could even advise that the number is “theirs” or that “they are the number holder” or that “they are authorized to allow text enabling,” when that is simply not the case. Indeed, an earlier Somos filing includes a lengthy email string demonstrating the risk of an entity text-enabling a number without the actual toll-free number holder’s consent.⁸ And the reverse can also occur – a *bona fide* toll-free number subscriber could have its wishes to have its number text-enabled thwarted if its claim as the subscriber goes unheeded.⁹

The *only* way to avoid this kind of confusion and harm to the actual toll-free number holder is to require the consent for the text enablement to come through the Resp Org. As Somos correctly states in its Petition, the Resp Org is the responsible party for “‘manag[ing] and administer[ing] the appropriate records in the SMS/800 [database]’ to ensure the correct routing of the subscriber’s Toll-Free traffic.”¹⁰ The Resp Org is that entity that should be responsible for confirming the agreement of *its customer*, as the toll-free number subscriber, to any text enablement of its number before that enablement is permitted to happen. Accordingly, as to this

⁷ For example, a party subscribing to a toll-free number can permit the use of that number by another in a packaged or integrated service. The number may be publicized by the “other” (for example on a web page or an 8xx directory) and that “other” may consider itself the subscriber of the number for purposes of changing Resp Orgs ~ something that is incorrect but which happens. CenturyLink has encountered these situations not routinely but often enough to know they are not aberrations.

⁸ Somos July 1, 2016 Letter at p. 1 and Exhibit A.

⁹ *Id.* at 2.

¹⁰ Somos Petition at p. 4, quoting from its tariff at Section 2.3. *See also* Somos July 1, 2016 Letter indicating that it may be that those who are facilitating text messaging to toll-free numbers do “not take into account how the Toll-Free industry works and completely disregards the role of the Resp Org.” Somos July 1, 2016 Letter at p. 2.

matter, the Commission should declare that Resp Org involvement is required before any toll-free number can be text enabled.

III. The Matter of Toll-Free Registries Should Not be Addressed In a Declaratory Ruling. The Matter Has Never Been Addressed By the Commission, Such That Any “Declaration” Of Commission Rule, Policy Or Direction Could Be Made.

Somos asks the Commission to declare that, before a toll-free number can be text-enabled, it should be vetted through the Somos-created TSS Registry, which was created “as an ancillary system to the SMS/800 database to centralize the service registration and routing reference information for messaging providers, routing database providers, Resp Orgs, and others in the messaging and Toll-Free ecosystems.”¹¹ Somos asserts that this TSS Registry is “the authoritative registry of Toll-Free numbers enabled for texting and other smart services, which allows messaging providers to enable and establish non-voice communications services on behalf of Toll-Free subscribers.”¹²

CenturyLink takes no position at this time regarding whether the Somos TSS Registry is the “authoritative registry” or not. It may be that it is; but there is no formal record on this issue in any ongoing Commission proceeding that would allow one to make a conclusion one way or the other. And CenturyLink believes that there is at least one other “registry” (operated by a hub provider) in the current marketplace, although it appears to lack the transparency associated with the Somos registry ~ a transparency that is vital and necessary for any fair operation.

A number of *ex parte* filings have been made by Somos and others expressing dissatisfaction with the current state of affairs with respect to texting to toll-free numbers. There are allegations that hub providers hoard routing information and charge monopoly rents in order

¹¹ Somos Petition at p. 9.

¹² *Id.*

to process texts to toll free numbers.¹³ And there are counter allegations that interested parties do not understand the technology or mechanics of successful texting to toll-free numbers.¹⁴

What is clear after reading these filings is that there are serious disagreements as to the way in which text messages to toll-free numbers should be handled, both operationally and as a matter of policy.

CenturyLink sees value in text-message registries with regard to the management of toll-free numbers. In our opinion, such registries should contain the routing information associated with all toll-free numbers (upon which the enabling of text-messaging functionality would be based), be transparent and be made available to all for a reasonable charge.¹⁵ At this time, and without further comment and analysis, CenturyLink cannot say as a foregone conclusion that it would be in the interest of all parties operating in the toll-free number environment or in the public interest to declare the Somos TSS registry as the “authoritative” registry.

We encourage the Commission to pursue discussions with industry representatives (through such organizations as CTIA or the SNAC) to gather additional information on the matter of texting and toll-free numbers, perhaps requesting a report on the state of affairs with regard to such texting along with a recommendation on how to proceed in the future. This type of outreach might alleviate the need for a formal rulemaking.

But to the extent industry activity does not lead to consensus on the matter of how to support texting to toll-free numbers, CenturyLink believes a rulemaking would be necessary.

¹³ Ex Parte Letter of Steven Levinn, CSF Corporation, to Marlene H. Dortch (FCC) Attachment email to Pramesh, WT Docket No. 08-7 and CC Docket No. 95-155 (Mar. 8, 2016).

¹⁴ See Ex Parte Letter from John Lauer, CEO ZipWhip, Inc., to Marlene H. Dortch (FCC), WT Docket No. 08-7 (May 26, 2016).

¹⁵ Somos makes a point at the beginning of its Petition to note that it operates its toll-free number management activities on a non-profit basis (*see* Somos Petition at p. 3), but it fails to make clear that its TSS registry is operated as a wholly-owned for-profit line of business.

Such a rulemaking should develop a record on which a sound economic and public policy assessment could be done with respect to whether there should be any registry at all with respect to texting to toll-free numbers. If that answer is “yes,” then the question would be whether any registry should be the exclusive one. If the answer again is “yes,” then a determination would need to be made if the Somos TSS registry should be the exclusive registry. If the answer is “no,” then the rulemaking should determine how multiple registries should operate in a manner that is transparent and cooperative. In all cases, the rulemaking should address how any established (or recognized) registry (a) would maintain a neutral operation and management of the process; (b) not impede competition; and (c) would be supported by something closer to a “cost plus” methodology than a purely for-profit one.

For the above reasons, CenturyLink supports the Somos Petition with respect to its first issue, *i.e.*, the need for Resp Org involvement before any toll-free number is text enabled; but believes the second issue, *i.e.*, the establishment of the Somos TSS as the exclusive and “authoritative registry,” is not appropriately addressed through a declaratory ruling.

Respectfully submitted,

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